

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alex Tuminello	Team: Squad #15	CCRB Case #: 201602205	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 03/10/2016 8:50 PM	Location of Incident: Lincoln Terrace Park, en route to the 77th Precinct stationhouse and the 77th Precinct stationhouse	Precinct: 77	18 Mo. SOL 9/10/2017	EO SOL 9/10/2017	
Date/Time CV Reported Thu, 03/10/2016 10:50 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 03/16/2016 10:30 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Dominick Vitale	21711	953538	077 PCT
2. POM Alejandro Valderrama	23435	953512	077 PCT
3. SGT William Diab	4730	940125	077 PCT
4. SGT Wayne Mims	04862	919948	077 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Matthew Rosiello	20090	951180	077 PCT
2. SGT Roger Quintero	05330	943706	077 PCT
3. POM Ernesto Defreitas	05133	926743	077 PCT
4. POM Jamar Burke	18983	958349	077 PCT
5. POF Sarah Satalino	19618	955451	077 PCT
6. POM Nitun Biswas	14501	956438	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT William Diab	Discourtesy: On March 10, 2016, at the Lincoln Terrace Park in Brooklyn, Sergeant William Diab spoke discourteously to § 87(2)(b)	
B.POM Alejandro Valderrama	Force: On March 10, 2016, at the Lincoln Terrace Park in Brooklyn, Police Officer Alejandro Valderrama used physical force against § 87(2)(b)	
C.POM Dominick Vitale	Force: On March 10, 2016, while en route to the 77th Precinct stationhouse, Police Officer Dominick Vitale used physical force against § 87(2)(b)	
D.POM Alejandro Valderrama	Force: On March 10, 2016, while en route to the 77th Precinct stationhouse, Police Officer Alejandro Valderrama used physical force against § 87(2)(b)	
E.POM Alejandro Valderrama	Discourtesy: On March 10, 2016, at the 77th Precinct stationhouse in Brooklyn, Police Officer Alejandro Valderrama spoke discourteously to § 87(2)(b)	
F.POM Alejandro Valderrama	Force: On March 10, 2016, at the 77th Precinct stationhouse in Brooklyn, Police Officer Alejandro Valderrama used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
G.POM Alejandro Valderrama	Force: On March 11, 2016, at the 77th Precinct stationhouse in Brooklyn, Police Officer Alejandro Valderrama used physical force against § 87(2)(b)	
H.SGT William Diab	Force: On March 11, 2016, at the 77th Precinct stationhouse in Brooklyn, Sergeant William Diab used physical force against § 87(2)(b)	
I.SGT Wayne Mims	Abuse: On March 11, 2016, at the 77th Precinct stationhouse in Brooklyn, Sergeant Wayne Mims threatened § 87(2)(b) with the use of force.	

### Case Summary

On March 10, 2016, at approximately 8:50 p.m., § 87(2)(b) was walking inside of the Lincoln Terrace Park in Brooklyn. As he walked deeper into the park, he observed an unmarked vehicle and heard a voice state towards him, “Stop moving.” An officer, identified by the investigation as PO Alejandro Valderrama of the 77<sup>th</sup> Precinct, approached him and allegedly stuck his hands into his hoodie pockets. § 87(2)(b) allegedly asked, “Who the fuck are you?” and PO Valderrama identified himself as a police officer. An officer, identified by the investigation as Sgt. William Diab also of the 77<sup>th</sup> Precinct, then rolled down his window and allegedly stated, “Fuck all this bullshit, we are bringing his ass in” (**Allegation A**). § 87(2)(b) was handcuffed by PO Valderrama who allegedly punched him from behind approximately three to four times in the lower left hand side of his back after he was handcuffed (**Allegation B**). § 87(2)(b) was allegedly pushed into the back of a police vehicle by PO Valderrama and his forehead made contact with the knee of an officer identified by the investigation as PO Dominick Vitale (**within Allegation B**). En route to the 77<sup>th</sup> Precinct stationhouse, PO Vitale allegedly placed his elbow over the right hand side of his neck and head. He also alleged that PO Valderrama punched him an additional four to five times on the left hand side of his lower back (**Allegations C and D**).

Upon arriving at the 77<sup>th</sup> Precinct stationhouse, § 87(2)(b) was escorted to the front desk of the stationhouse where an officer, identified as the investigation as Sgt. Roger Quintero, was working. § 87(2)(b) asked Sgt. Quintero if he could sit on the floor because his stomach hurt and Sgt. Quintero said “Go ahead.” § 87(2)(b) was then walked over to a wall by PO Valderrama, PO Matthew Rosiello, PO Vitale and Sgt. Diab. § 87(2)(b) then leaned on the wall and slid down the wall and towards the floor. He alleged that an officer identified by the investigation as PO Valderrama told him to stand up and stated, “I don’t want to hear that bullshit” (**Allegation E**). A chair was then slid over and PO Valderrama allegedly grabbed § 87(2)(b) leg and shirt and threw him on the chair (**Allegation F**). § 87(2)(b) alleged that he was taken to the holding cell area by officers identified by the investigation as PO Valderrama and PO Rosiello.

While in the holding cell area, Sgt. Diab explained to § 87(2)(b) that the officers needed to take pictures of him. PO Valderrama, Sgt. Quintero, PO Vitale, PO Rosiello and Sgt. Quintero attempted to lift his shirt up and he continuously turned away. § 87(2)(b) stated that two unidentified EMTs then arrived at the stationhouse and he was escorted to § 87(2)(b) via ambulance at approximately 10 p.m. in regards to alleged pain he sustained while at the Lincoln Terrace Park and the 73<sup>rd</sup> Precinct stationhouse.

After his hospital visit, he returned to the 77<sup>th</sup> Precinct stationhouse at approximately 2:07 a.m., on March 11, 2016 where he once again refused to allow the officers to take pictures of him. He was then escorted to a the female holding cell area where he was allegedly pinned up against a wall by officers identified by the investigation as PO Valderrama and Sgt. Diab (**Allegations G and H**). § 87(2)(b) alleged that an unidentified white male officer in uniform and an officer, identified by the investigation as Sgt. Wayne Mims, entered the cell area holding two yellow Tasers. Sgt. Mims allegedly said, “Either take the pictures or get tasered right now” (**Allegation I**). The officers took a photograph of § 87(2)(b) but he did not know why. § 87(2)(b) was escorted via ambulance to § 87(2)(b) a second time because he was complaining of pain to his stomach, wrist and shoulders.

§ 87(2)(b) was charged with § 87(2)(b)

Video footage was not available in regards to this incident.

#### **Mediation, Civil and Criminal Histories**

- This case was unsuitable for mediation § 87(2)(g)
- According to a notice of claim inquiry sent to the Office of the New York City Comptroller's Office, § 87(2)(b) has filed a notice of claim with the City of New York for five millions dollars (Encl. Board Review). On June 24, 2016, an e-mail was sent to the New York City Law Department in regards to determine if a 50-h hearing will be scheduled for § 87(2)(b) claim.
- § 87(2)(b), § 87(2)(c)

#### **Civilian and Officer CCRB Histories**

- This is the second CCRB complaint involving § 87(2)(b) § 87(2)(b)
- PO Valderrama has been a member of the service for three years and has been the subject of 15 previous CCRB allegations involving five cases. In CCRB case no. 201507839, allegations of stop, frisk and search were substantiated against PO Valderrama. The Board recommended Command Discipline-A and the NYPD disposition for this case is still not available. § 87(2)(g) CCRB case numbers 201402587 and 20151014, physical force allegations were pled against PO Valderrama and closed as unsubstantiated and complainant uncooperative.
- PO Vitale has been a member of the service for three years and has been the subject of one previous CCRB allegation. § 87(2)(g) This allegation was not substantiated.
- Sgt. Diab has been a member of the service for 10 years and has been the subject of 16 previous CCRB allegations involving 10 cases. In CCRB case no. 200800389, a physical force and discourtesy allegations were substantiated against Sgt. Diab and he was found guilty in a departmental trial and was penalized 35 vacation days. In CCRB case no. 201507839, a stop of a person allegation was substantiated against Sgt. Diab. The Board recommended command discipline A. The NYPD disposition is not listed. § 87(2)(g) CCRB case numbers 200612375 and 200810798, a discourtesy and force allegations were pled against Sgt. Diab and closed as unfounded and complainant uncooperative. Additionally, in CCRB case no. 201604362, a physical force allegation has been pled against Sgt. Diab. This case is still active.
- Sgt. Mims has been a member of the service for 18 years and has been the subject of three previous CCRB allegations involving two cases. § 87(2)(g)

§ 87(2)(g) none of the allegations were substantiated.

## **Findings and Recommendations**

### **Identification of Subject Officers**

- While inside of the Lincoln Terrace Park, § 87(2)(b) alleged that an officer rolled down the window to the vehicle stated to him, “Fuck all this bullshit. We are bringing his ass in.” § 87(2)(b) described this officer as a Hispanic or white male. § 87(2)(b) did not state specifically where this officer was located in the vehicle. § 87(2)(g)

- § 87(2)(b) alleged that upon arriving back at the 77<sup>th</sup> Precinct stationhouse from § 87(2)(b) he was pinned up against a wall by an officer. While all of the officers denied that this force occurred, the investigation determined that based upon the statement of Sgt. Wayne Mims, he overheard a commotion from the holding cell area, grabbed a Taser and made his way to the area. Upon arriving at the holding cell area, he observed PO Valderrama and Sgt. Diab attempting to restrain § 87(2)(b) § 87(2)(g)
- § 87(2)(b) alleged that while in the cell area of the 77<sup>th</sup> Precinct stationhouse, an unidentified white male officer and an officer he identified as “Sgt. Simms” entered the area with two yellow Tasers in their hands. During his CCRB statement, Sgt. Mims identified himself as the only officer that entered the cell area holding a Taser during an incident involving § 87(2)(b) and the investigation is crediting his statement. § 87(2)(g)

### **Allegation Not Pleaded**

- Abuse of Authority: Search of a person- During his sworn statement, § 87(2)(b) alleged that as the officers attempted to search him in the holding cell area, PO Valderrama and PO Rosiello pulled his pants in order to visually inspect his buttocks area. § 87(2)(g)

### **Allegation A: Discourtesy- On March 10, 2016, at Lincoln Terrace Park in Brooklyn, Sergeant William Diab spoke discourteously to § 87(2)(b)**

During his phone and CCRB statements, § 87(2)(b) alleged that as he walked through Lincoln Terrace Park in Brooklyn, he heard a voice state, “Stop moving.” He was approached by PO Valderrama who attempted to search him. § 87(2)(b) did not know that PO Valderrama was an officer and he asked, “What the fuck are you doing? Who the fuck are you?” At this point, Sgt. Diab allegedly rolled down the unmarked vehicle’s window and stated, “Fuck all that bullshit. We are bringing his ass in.”

PO Valderrama stated that he approached § 87(2)(b) with his shield being displayed and stated, “Police.” He explained to § 87(2)(b) that the park closes at dusk and asked him for his identification. § 87(2)(b) refused, prompting gestures as he spoke. PO Valderrama informed § 87(2)(b)

§ 87(2)(b) that he could not issue him a summons without verifying his identity and that he would be placed under arrest.

Sgt. Diab, PO Valderrama, PO Vitale and PO Rosiello testified that at no point did Sgt. Diab nor any officer state to § 87(2)(b) “Fuck all that bullshit. We are bringing his ass in.”

§ 87(2)(g)

**Allegation B: Force- On March 10, 2016, at Lincoln Terrace Park in Brooklyn, Police Officer Alejandro Valderrama used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that upon being handcuffed by PO Valderrama, the officer punched him from behind approximately three to four times in the lower left hand side of his back and then stated, “You ain’t tough no more.” § 87(2)(b) then alleged that PO Valderrama pushed him in the backseat of the police vehicle causing his forehead to make contact with the knee of PO Vitale who was seated in the back of the vehicle at this time.

All of the officers who were present at the time of § 87(2)(b) arrest testified that the latter was handcuffed without incident. In addition, all of the officers stated that at no point did PO Valderrama punch § 87(2)(b). The officers also stated that at no point did PO Valderrama push § 87(2)(b) into the police vehicle.

§ 87(2)(g)

**Allegation C: Force- On March 10, 2016, en route to the 77<sup>th</sup> Precinct stationhouse in Brooklyn, Police Officer Dominick Vitale used physical force against § 87(2)(b)**

**Allegation D: Force- On March 10, 2016, en route to the 77<sup>th</sup> Precinct stationhouse in Brooklyn, Police Officer Alejandro Valderrama used physical force against § 87(2)(b)**

While en route to the 77<sup>th</sup> Precinct stationhouse, § 87(2)(b) stated that he sat in between PO Valderrama and PO Vitale. He alleged that PO Vitale placed his elbow over the right hand side of his neck and head and that PO Valderrama punched him an additional four to five times on the left hand side of his lower back.

PO Valderrama and PO Vitale identified themselves as the officers that sat in the back seat on each side of § 87(2)(b). PO Valderrama stated that § 87(2)(b) was yelling and cursing during the transport back to the stationhouse. PO Valderrama and PO Vitale denied that § 87(2)(b) was punched, pushed or elbowed as he was being transported to the stationhouse. PO Rosiello was the driver of the police vehicle and stated that none of the officers punched or pushed § 87(2)(b).

§ 87(2)(g)

§ 87(2)(g)

**Allegation E: Discourtesy- On March 10, 2016, at the 77<sup>th</sup> Precinct stationhouse in Brooklyn, Police Officer Alejandro Valderrama spoke rudely to § 87(2)(b)**

**Allegation F: Force- On March 10, 2016, at the 77<sup>th</sup> Precinct stationhouse in Brooklyn, Police Officer Alejandro Valderrama used physical force against § 87(2)(b)**

Upon arriving at the stationhouse, § 87(2)(b) explained to Sgt. Roger Quintero, who was the desk officer, that his stomach hurt and he asked if he could sit on the floor. Sgt. Quintero responded to § 87(2)(b) “Go ahead.” § 87(2)(b) alleged that he was walked over to a wall by PO Valderrama, PO Rosiello, PO Vitale and Sgt. Diab and § 87(2)(b) leaned on the wall in order to slide down and sit on the floor. As § 87(2)(b) began to explain the incident to Sgt. Quintero, PO Valderrama stated to § 87(2)(b) “I don’t want to hear that bullshit.” A chair was then slid over and PO Valderrama commanded § 87(2)(b) to get up. PO Valderrama allegedly grabbed § 87(2)(b) by his leg and shirt and proceeded to throw him into a chair which caused the left hand side of his ribs and leg to make contact with the chair. § 87(2)(b) stated that he was escorted to the holding cell area by PO Valderrama, PO Rosiello, PO Vitale and Sgt. Diab.

PO Valderrama, PO Rosiello, PO Vitale, Sgt. Diab and Sgt. Quintero stated that while at the front desk, § 87(2)(b) slid down the wall and laid on the floor. While on the floor, § 87(2)(b) alleged that the officers assaulted him and he was trying to get paid. PO Valderrama stated that he lifted § 87(2)(b) up off the floor by his shoulders. PO Valderrama, PO Rosiello, PO Vitale and Sgt. Diab did not recall if a chair was brought over for § 87(2)(b) however, Sgt. Quintero recalled that a chair was brought over for § 87(2)(b). Sgt. Quintero stated that at no point was § 87(2)(b) thrown into this chair.

While in police custody, § 87(2)(b) was transported to § 87(2)(b) on two separate occasions. On March 10, 2016, at approximately 10:15 am, § 87(2)(b) was admitted at the emergency room of the aforementioned medical facility. His chief complaint was abdominal and back pain as a result of an assault. He later told the attending physician that he was experiencing pain to his left side after the police pushed him down following his arrest during the afternoon hours. He was subsequently discharged after being diagnosed with abdominal tenderness. On March 11, 2016, at approximately 3:36 am, § 87(2)(b) was admitted for a second time at § 87(2)(b) complaining of pain to his right shoulder and both wrists. § 87(2)(b) explained to a physician that he had been “roughed up” by the police after he was taken to the back of the precinct. § 87(2)(b) was discharged after being diagnosed with contusion to the right shoulder and given Ibuprofen (Encl. See Medical Records Folder).

A photograph provided to the CCRB by PO Valderrama of the alleged injury area on the front of § 87(2)(b) body indicates no bruising or lacerations to the abdominal area (Encl. Board Review 03).

The Unusual Occurrence Report completed by Sgt. Diab to the Chief of Internal Affairs regarding this incident indicates that § 87(2)(b) was arrested without incident at Lincoln Terrace Park for being inside of the park after dusk and being in possession of marijuana. Sgt. Diab noted that § 87(2)(b) was transported to the 77<sup>th</sup> Precinct stationhouse without incident. At the stationhouse, he

“plopped” himself on the floor and claimed that the officers had “beat him up.” § 87(2)(b) requested an ambulance which was requested. He was removed to § 87(2)(b) for evaluation (Encl. Board Review 04).

§ 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

**Allegation G: Force- On March 11, 2016, at the 77<sup>th</sup> Precinct stationhouse in Brooklyn,**

**Police Officer Alejandro Valderrama used physical force against § 87(2)(b)**

**Allegation H: Force- On March 11, 2016, at the 77<sup>th</sup> Precinct stationhouse in Brooklyn,**

**Sergeant William Diab used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that upon arriving back from the hospital on March 11, 2016 at approximately 2:55 a.m., he was escorted to the holding cell area where he was told by Sgt. Quintero that the officers would take the pictures of § 87(2)(b) with his shirt off one way or another. He stated that approximately 15 to 20 officers stood in the doorway of the cell and he was grabbed by officers identified by the investigation as PO Valderrama and Sgt. Diab. He alleged that the officers pinned him up against the wall for approximately one to two minutes and bent his arms backwards.

PO Valderrama stated that when § 87(2)(b) arrived back from the hospital, he fingerprinted him and § 87(2)(b) was calm.

Sgt. Diab stated that he saw § 87(2)(b) in the holding cell area when he arrived back from the hospital. At this time, Sgt. Diab filled out a UF-49 in regards to this incident.

PO Valderrama, Sgt. Diab, PO Vitale, PO Rosiello and Sgt. Quintero did not recall an incident occurring in the holding cell area between the officers and § 87(2)(b) upon his arrival back from § 87(2)(b)

PO Ernesto Defreitas was assigned to the cell area for Tour 3 on March 10, 2016 while PO Jamar Burke and PO Sarah Satalino of the 77<sup>th</sup> Precinct were also assigned to the cell area for Tour 1 on March 11, 2016. PO Defreitas, PO Burke and PO Satalino did not recall a specific incident occurring in the cell area with § 87(2)(b)

Sgt. Mims stated that while at the desk, he heard a commotion from the female holding cell area and heard § 87(2)(b) voice stating, “Get off me.” He also heard officers’ voices stating, “Stop fighting.” Sgt. Mims picked up a Taser and ran 10 to 15 feet towards the area. He stated that PO Nitun Biswas and Sgt. David Jones were behind him. Upon arriving at the cell area, he observed Sgt. Diab and PO Valderrama with § 87(2)(b) He stated that § 87(2)(b) was bent over and had his hands in front of his waist. He stated that the officers were on each side of § 87(2)(b) and trying to get his hands. The officers were commanding him to stop resisting and fighting. Sgt. Mims then commanded § 87(2)(b) to stop fighting and do what he is being told. § 87(2)(b) then calmed down and stated that he did not want the officers taking pictures of him.



§ 87(2)(g)

**Allegation I: Abuse of Authority- At the 77<sup>th</sup> Precinct stationhouse in Brooklyn, Sergeant Wayne Mims threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) alleged that while being pinned up against a wall in the holding cell area, an officer identified by the investigation as Sgt. Mims and an unidentified officer entered this area with two holding two yellow Tasers in their hands. § 87(2)(b) alleged that Sgt. Mims then stated to him, “Either take the pictures or get tasered right now. What do you want to do?”

As noted in the analysis Allegations G and H, Sgt. Mims heard a commotion in the holding cell area and responded with a Taser. He observed PO Valderrama and Sgt. Diab struggling with § 87(2)(b) and Sgt. Mims commanded § 87(2)(b) to stop fighting and do what he is being told. Sgt. Mims stated that he stood at the cell door approximately three to four feet from § 87(2)(b) pointed the Taser at him and stated, “Stop resisting or you will get tasered.” Sgt. Mims stated that he never stated, “Take the pictures or get tasered right now.”

Sgt. Diab and PO Valderrama did not recall an incident involving a threat to use a Taser against § 87(2)(b)

Use of a Taser is permissible only against individuals who are actively physically resisting arrest, exhibiting active and physical aggression, or to prevent individuals from injuring themselves or others. NYPD Patrol Guide 212-117 (Board Review 07).

§ 87(2)(g)

---

Squad: 15

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Page 8

CCRB Case # 201602205

